

# PROPERTY RELATIONS AND WOMEN'S ACCESS TO COURTS AMONG THE ANLO AND THE ASANTE IN GHANA

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## Abstract

The main objective of the study was to find out which courts women access in view of their unfavourable experiences of traditional institutions on property inheritance. The other reason for the study was to discover whether indigenous courts really play a significant role in the settlement of cases among the Anlo and Asante to ease congestion of disputes in the formal courts. The study used a strategic sampling procedure and a qualitative approach. Women in Anloga and Kumasi were interviewed. Records of both indigenous and the formal courts proceedings on property related cases were also studied. The field data were supplemented by secondary data and observation. All were triangulated. The findings are that contrary to expectation, the inequality in property relations engendered by the family laws and socio-cultural practices did not affect women's access to the formal and indigenous courts in the studied communities. Women's reluctance to assert rights is, in fact, mainly because they often are confronted by significant social pressure from their families and communities not to seek formal legal recourse; and instead to resolve the cases outside the court, domestically.

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**Keywords:** Property, Inheritance, Perception, Court

## Introduction

Analyses of Anlo and Asante family socio-cultural practices of inheritance have shown that society gives fewer property inheritance rights to women than their male counterparts when it comes to inheriting from a man. In the face of this apparent bias, the question is: how would the inequality of property relations engendered by family socio-cultural practices influence Anlo and Asante women's selection of courts for defending or

claiming their rights? Would women choose formal courts other than indigenous fora to defend or claim their rights? Or are there other factors involved in the choice of courts by women? The study will try to find answers to these questions, discuss the findings, and conclude.

The issue of property relations between men and women has attracted a lot of scholarly debates. For example, Whitehead attributes inequality in property relations between men and women in small societies to legal and ideological practices within the kinship structures, which dictate the inheritance practices. She argues that these legal and ideological practices tend to “construct men’s and women’s ability to act as fully independent subjects in relation to property quite differently” (Whitehead, 1984: 177). This argument seems to corroborate the flawed cultural conceptions among the Anlo and Asante that women need little or no property. For example, indigenous proverbs and metaphors of the ethnic groups, such as “the palm tree does not bear fruit in a woman’s farm” or that “If a woman buys a gun, it is a man who keeps it” encapsulate some of these thought systems. All this indicates that women are not supposed to be as economically productive as men are, and even if they are, men control their resources. This socio-cultural practice stratifies society with men having economic dominance over women (see Goody, 1969: 65). This economic stratification, among other things, may affect women’s access to the formal court. Crook, on the other hand, argues that both men and women in Ghana access the formal court more than any other legal forum and that a person’s economic status, power in society and educational background are irrelevant (Crook, 2004: 10). In addition, Oomen in her correlation analysis concludes, among other things, that Sekhukhune women in South Africa are slightly more supportive of traditional institutions than men do in that country (Oomen, 20005). While the present study does not concern women in South Africa, it tries to find out about how socio-cultural practices could affect Anlo and Asante women’s access to arbitration types located in their communities.

### **Property Relations Among The Anlo And The Asante**

Inheritance among the Anlo and the Asante refers to transfer of property from an original owner to an heir. This normally happens when the owner of the property is dead. The transfer may also be in the form of a gift. Property, on the other hand, could be any object of legal rights. In anthropology, property relations are essentially social relations (Davids, 1973a: 157).

Among the patrilineal Anlo, a man and a woman, in principle, can inherit their father’s property because both come from the same father, and for that matter, the same

lineage. But when it comes to the actual practice, men have greater inheritance rights. In one trouble-less case, for instance, Agama, a family head, and therefore, a key informant, reported that after the death of a man, his property, which included a farm land, was divided among his eight children (four men and women). The case is typical because among the Anlo, land issues relate to livelihood. Women in principle do not have the right to inherit a land from their fathers. As a productive source, only men access, control and use it to support their immediate families, including women as wives. But in this instance, first, the farm land, which was a self-acquired property of the deceased, was divided according to the number of children. Preference went to the men to pick the portion of the land they wanted first before the women. The men also picked according to seniority of age; the eldest son of the deceased was asked to make his selection followed by the younger and then youngest man. When it came to the women's turn, the same age seniority determined who picked first and who picked last. After sharing the farm land, they divided the deceased shallot farm, which comprised forty eight shallot beds. Two beds of shallot went to each of the women while the men received ten beds each. According to the informant, the deceased left a house behind. However, this property was not shared because it was built on family land. This means the deceased's children can use it but they cannot dispose of it.

Before their deaths, some men will bequeath a portion of their property over to their daughters, in order to avoid discrimination and ensuing quarrels. This typically involves notifying elders who may be family members and outsiders. Culturally, the outsiders are important as necessary witnesses in case family members condone and connive to take the property from the rightful heir after the death of the donor. Normally this process is sealed with a drink (alcoholic beverage).

In polygamous marriages, ideally female children also had equal share with their male siblings when property was distributed according to the number of mothers and not according to the number of children. This was so that the female child and her mother could also have a share in the intestate property, such as domestic animals, household chattels, farms and residential lands.

If a deceased father has no male child but has only a daughter, the latter may by tradition and custom inherit his property. Unlike a son who enjoys a permanent interest, a daughter receives only temporary interest in the property. Her children may be considered to use the estate after her death on moral ground. This means they suffer eviction if their behaviour does not please members of the patrilineal family from which their mother had the

temporary right of inheritance. Thus, while a male member's individual share of land or house passes on to his children upon his death under the system, a woman's share reverts to the lineage.

When a man passes away childless and intestate, his brothers and sisters inherit him. Even in this context, brothers often have more inheritance rights than their sisters. All this happens because the patrilineal legal system gives more importance to the man and therefore confers more inheritance rights on him. Thus, according to Kludze (1973) and Nukunya (1993), among the Anlo, both sons and daughters are considered when property is distributed, but the sharing is often unequally done. Kludze has further noted that the Anlo increasingly consider the claims of daughters as a privilege only, and not a right that can be enforced before a court of law, particularly in the case of land inheritance.

In the matrilineal family legal system of Asante wives and children do not inherit their husband's or father's property. However, Asante law allows if a father makes a traditional will before his death, in which case his self-acquired estate may be posthumously shared among beneficiaries including his wife and children. A husband can also give a portion of his self-acquired property to his wife and children before his death. The husband, just as among the patrilineal Anlo, has to do this in the presence of his family members and others outside the family. In each case, a beneficiary is obliged to present a bottle of rum or an equivalent present to the gathering indicating his or her acceptance of the gift. The present is shared in the gathering. This drink or present and the witnesses are significant in the indigenous transaction of gifting. In other words, the present is a testimony that the particular property has been given to the donee by the donor. The gathering is also a witness to the event against prospective litigation on the property. The above procedure in the indigenous inheritance system of Asante, just as among the Anlo, legally seals the transaction of gifting. According to Sarbah (1904), for the procedure to be valid, the donor must have the intention of giving and passing the item to the donee and that its acceptance must occur in the lifetime of the donor. Moreover, the transaction of giving and receiving 'must be proved and evidenced by such delivery or conveyance as the nature of the gift admits' (Sarbah 1904: 60-1).

The socio-cultural practice among the Asante allows that women (nieces) inherit property from their uncles, but men (nephews) are given prior consideration. Women and men, as indicated, however, cannot legally inherit from their male parents. Even here, in spite of the legal prohibition, male parents make special provisions for their sons.

The general feeling among the Anlo and the Asante for not making adequate provision for women with a man's property is the fear that women may transfer the inherited property to their husbands' lineages. Added to the reasons why women receive lesser property inheritance rights among the Anlo and Asante is that a woman (as a wife) is expected to receive maintenance and support from her husband.

As a beneficiary of the estate, the man in the patrilineage retains it within the family to pass on to others. By remaining in the lineage, a man not only brings about continuity, but also helps in immortalizing it. As a result, men are supposed to own more property, including land, to enable them to raise a family for this immortalization.

Among the Anlo and the Asante, women who marry within their own lineages however, are more likely to have greater inheritance rights since the property they use remains in the same lineage. They may use land, for example, as long as they are alive and maintain links to their husbands' lineage, but cannot pass these rights on to others outside the lineage. It appears that both patrilineal and matrilineal systems of inheritance do not favour, women, especially in exogamous marriages. It is therefore, clear that the main reason for patrilineal and matrilineal inheritance systems is to maintain, retain and secure the property within the lineages.

The expectation placed on the traditional inheritance systems is that either the matriclan or patriclan will take care of everyone. Indigenous law does not make any provisions for divorcees or widows. As such, as indicated, a man can only bequeath part of his self-acquired property to his wife and children as a gift or through a written or oral will (*nsamansiw*). However, it is possible for the family, with an intestate death, to bequeath part of the self-acquired estate to the wife and children of the deceased. Bosman (1967: 102), however, explains that 'on the death of either the man or the wife the respective relatives come and immediately sweep away all (property), not leaving the widow or widower the least part thereof'. It is even possible to challenge the transfer of property to the wife or children if no witnesses testify that the host provided drinks to acknowledge the transfer. Mikell (1984) says that nearly every time, people who mill around will remember the ceremony, the witnesses, the kinds of items and amount presented. However, Vellenga (1983) reports instances of challenges or even repudiations to oral wills, leaving the widow and/or children destitute.

## Methodology

Qualitative research approach was mainly used. The reason for this choice is that it facilitates close interactions with informants/respondents and their settings. The research involved strategic sampling (see Verschuren and Doorewaard, 1999: 164). This strategy is important because it helps the researcher to be consciously guided by the conceptual design or the information he intends to extract. In other words, chance is replaced by the set of problems the researcher envisages to deal with when selecting the research units. Therefore, we first selected a small number of women (40) from both Anloga and Kumasi and strategically sampled them for both individual and group interviews with the help of locals acquainted with the women. These were women who were denied rights to benefits from their deceased male parent or husband's property. Most of the women were ordinary citizens in their communities. The rest were women chiefs in their localities. The choice of women is very important because indigenous legal decision-making procedures allegedly infringe, especially on their rights. The indigenous system of law also allegedly regards women as residual categories. As such, there is a general perception that women are most affected by certain legal and socio-cultural practices in their respective communities. Unstructured, open, detailed, individual and group interview techniques were used. Furthermore, participant observation of the normal range of life in the studied communities was made. These techniques, apart from confirming the data collected, also help to form a complete picture, and not just certain aspects of the research objects. In all this, the primary intention was to describe and analyse what qualitatively affected women or incapacitated their ability to claim or defend their property inheritance rights legally. In order to understand the gender dynamics in access to both traditional (indigenous) and formal courts of the socio-cultural groups, court-records of property-related cases in both Anloga and Kumasi in the Volta and Ashanti regions of Ghana were analysed. In Anloga, for instance, *Avadada's* indigenous court records dating from 2001 to 2006 were analysed. Avadada is next to the Anlo king in terms of political and judicial power. Similarly, Anloga District Court records were analysed. A similar study was conducted on the records from 1994 to 2000 and 2005 at *Asantehene's* indigenous court. Finally, the Adum Circuit Court records in Kumasi from 1998-2006 was also examined. One of the limitations of the research is the lack of statistical data preservation in both indigenous and the formal courts. It is therefore very difficult to obtain data for the same range of study periods.

## Results

First, interviews conducted among women among the socio-cultural groups in Anloga and Kumasi induced a variety of responses on the question as to which arbitration type (indigenous court or formal court) they liked or disliked. The informants, who preferred the formal court, gave a number of reasons for their preferences, which included grounds such as: its actors are better educated or trained, the court is able to enforce its sanctions and give due protection to those who are in need of it. The formal court also seems impartial to women. What they did not like was: the adversarial nature of the court, the corruption of some of its lawyers, the high service and lawyers' fees, the cumbersome formalities and the strict technicalities in the court, the usage of foreign language and the protracted nature of trials.

Those who liked the indigenous court praised its reparatory and restorative character, its moderate service costs, its prompt treatment and disposal of cases and its easily understandable procedures due to the use of local languages, among other reasons. The main criticism held against the indigenous court was: its lack of representation of women in the jury, its inability to effectively enforce its sanctions, and its lack of ability to give protection to those who are in need of it. The informants also mentioned the bribery and corruption of some of its actors as drawbacks of the indigenous court. Many women proved to be also selective as to which arbitration type to pick, which depended on the kind of case they were confronted with. For example, women prefer to take theft and rape cases and other cases that threaten their lives to formal courts. They, on the other hand, think that land and marital or family cases may be better held in an indigenous court setting than in a formal one. This is because chiefs and elders in the courts live in the same communities and so may thus know the territorial boundaries in particular land disputes. They may moreover, also know the character of the disputants. They, in other words, are thought to be more capable of giving appropriate advice on such cases.

Secondly, the study shows gender dynamics in the access to indigenous and the formal courts. It evaluated the general attendance in both formal and indigenous courts. The intention was to determine the woman to man ratio of property inheritance cases submitted to these courts. The underlying objective was to find out what arbitration types women access in view of the unfavourable experiences of traditional institutions on property inheritance. The other reason for the study was to discover whether or not indigenous courts really play a significant role in the settlement of cases (in the fieldwork's locations) to ease the legal congestion of disputes in formal courts.

***Avadada's Indigenous Court, Anloga***

The table below illustrates the number of cases registered at the Avadada's indigenous court in Anloga during the study period. These cases, like the subsequent ones were all property related.

**Table 1: Avadada's indigenous court**

| <b>Study period</b> | <b>No. of Cases by Males</b> | <b>No. of Cases by Females</b> |
|---------------------|------------------------------|--------------------------------|
| 2001                | 0                            | 5                              |
| 2002                | 5                            | 4                              |
| 2003                | 16                           | 16                             |
| 2004                | 18                           | 18                             |
| 2005                | 13                           | 2                              |
| 2006                | 6                            | 5                              |
| <b>Total Cases</b>  | <b>58</b>                    | <b>50</b>                      |

Out of the 108 resolved cases at the Avadada's indigenous court, during the study period (2001-2006), females were recorded to have submitted 50 cases, while their male counterparts registered 58 cases. The records thus show that males in Anloga are a little ahead of females considering the number of cases submitted. This difference is however, not statistically significant enough to argue that they value the indigenous court more than females do.

***District Court, Anloga***

Table 2 illustrates the number of cases sent by gender to the District Court in Anloga. Within the study period, women registered 44 cases, while men submitted 32 cases out of a total of 76 cases tried in the court.

**Table 2: District Court, Anloga**

| <b>Study Period</b> | <b>No. of Cases by Males</b> | <b>No. of Cases by Females</b> |
|---------------------|------------------------------|--------------------------------|
| 2001                | 4                            | 8                              |
| 2002                | 0                            | 0                              |
| 2003                | 7                            | 7                              |
| 2004                | 8                            | 5                              |
| 2005                | 9                            | 20                             |
| 2006                | 4                            | 4                              |
| <b>Total Cases</b>  | <b>32</b>                    | <b>44</b>                      |

The analyses of the findings from both the Avadada's indigenous court and the District Court show that we cannot quantitatively tell much about the differences in court access by both sexes. This is because the differences in the records in both courts, as illustrated in Tables 1 and 2, seem too small to show a significant male-female divergence. In table 2, for example, there are only two periods out of the six in which women used the District Court more than men did. In quantitative terms, the difference in the record of cases is hence not



sizable enough to substantiate a clear preference of women to go to either of these courts. Any explanation of the difference may only indicate a qualitative cause. The fieldwork has shown that the plots of land, on which people's livelihood largely depends on in Anloga and other Anlo towns and villages, are a scarce commodity. This situation compels people to compete for the scarce land resources. As a result of the scarcity, most disputes are centred on land related issues.

The scarcity of land has also led many Anlo men and women to indulge in fishing for their survival. Key informants, such as the *mamaga* (the female chief of Anloga), Togbe Avevor (the regent of Avadada) and also Kofi Togobo (the oral historian of Anlo), have explained that when there is enough rain and an abundance of fish in the sea and in the Keta Lagoon there are fewer disputes. There seems thus a correlation between the rise and fall in disputes and the state of the weather (drought or rainy period) in Anloga. According to Kofi Togobo, during bad weather and a concurrent bad economic situation, 'people protect what they already have or reap what they have not sown' and this leads to conflicts. The next exercise is to determine the dynamics of court access in both indigenous and formal courts in Kumasi.

#### ***Asantehene's indigenous court***

Table 3 shows the number of cases brought forth by gender to the court during the research's study period. Males altogether registered 1,546 cases within the study periods from 1994-2000, while their female counterparts settled 596 cases. The study indicates that males in Kumasi took more cases to the indigenous court.

**Table 3: Asantehene's indigenous court**

| <b>Study Period</b> | <b>No. Cases by Males</b> | <b>No. of Cases by Females</b> |
|---------------------|---------------------------|--------------------------------|
| 1994                | 526                       | 181                            |
| 1995                | 160                       | 78                             |
| 1996                | 60                        | 24                             |
| 1997                | 218                       | 53                             |
| 1998                | 230                       | 69                             |
| 1999                | 300                       | 175                            |
| 2000                | 52                        | 16                             |
| 2005                | 55                        | 16                             |
| <b>Total Cases</b>  | 1601                      | 612                            |

The question one may ask is what has constituted the low turnout among women to submit cases to the court. The low turnout of women could possibly be explained as a result of the fact that the husbands represented their wives in some of the cases in court. In the matrilineal inheritance system of the Asante, for example, where nephews and nieces inherit from their uncles, or where both female and male siblings can inherit from their female parent, a

husband may decide to represent his wife in the settlement of a dispute that concerns an issue of inheritance. The issue of representation arises in consideration of the fact that traditionally in Ghana men have tended to yield more influence over their wives' decision-making.

Second, since this research has shown that women have more inheritance rights than men - insofar as self-acquired properties of female parents are concerned - in the matrilineal inheritance system, men may try through legal means in the male dominated institution to factor-in their inclusion, if other avenues seem futile. It is also possible that women were not attracted to bring their case to the male chief's court, where female are scarcely represented in the panel of judges.

#### ***Adum Circuit Court, Kumasi***

Like the preceding exercise, a similar study has been conducted from 1998 to 2006 in Adum Circuit Court (Kumasi). Out of the total 1,002 cases registered, males reported 590 cases, while the number of cases presented by females was 412. Table 4 outlines the number of cases that were brought to court by men and women.

**Table 4: Adum Circuit Court, Kumasi**

| <b>Study Period</b> | <b>No. of Cases by Males</b> | <b>No. of Cases by Females</b> |
|---------------------|------------------------------|--------------------------------|
| 1998                | 125                          | 92                             |
| 1999                | 0                            | 0                              |
| 2000                | 29                           | 51                             |
| 2001                | 41                           | 15                             |
| 2002                | 28                           | 43                             |
| 2003                | 116                          | 60                             |
| 2004                | 110                          | 45                             |
| 2005                | 72                           | 74                             |
| 2006                | 69                           | 32                             |
| <b>Total Cases</b>  | <b>590</b>                   | <b>412</b>                     |

This research has earlier indicated that some of the women interviewed in both Anloga and Kumasi felt that the formal court was often too expensive. In Ghana men are usually financially stronger than women are (WiLDAF/FeDDAF-West Africa, 2003/2004: 1). This financial weakness on the part of women may have contributed to their comparatively low turnout compared with men's access to the formal court. Also a number of factors hamper women's ability to enforce their inheritance rights at court. Among them are: high levels of illiteracy, ignorance of the law, high service cost, lack of enforcement of the law, limitations in respect of access to justice, and especially, interference by and fear of the extended family (see also R nger 2006).

## Discussion

The research findings have shown that access to indigenous court was higher than that of the formal court in the studied communities and that the former could help decongest cases in the latter. In addition, women generally had a low turnout in access to both indigenous and the formal arbitration types. The women interviewed in both Anloga and Kumasi felt that the formal court was often too expensive to access. In Ghana, men are usually financially stronger than women (WiLDAF/FeDDAF-West Africa, 2003/2004: 1). This financial weakness and other factors on the part of women, as indicated, may have contributed to their comparatively low turnout compared with men's access to the formal court.

In his article entitled "Access to Justice and Land Disputes in Ghana's State Courts: the Litigants' Perspective", Richard C. Crook (2004) however, argues that Ghanaians access the formal court more than any other legal forum and that a person's economic status, power in society and educational background are irrelevant (2004: 10). As a result of the predominant access, according to Crook, the formal courts in Ghana are congested with cases. He based his findings on case studies conducted in: a magistrate court in Goaso (a district capital and a cash crop (cocoa) growing area noted for migrant population); a High Court in Kumasi (a regional capital); and a High Court in Wa (another regional capital). The courts were located in the Brong Ahafo, Ashanti and the Upper West regions of Ghana. The collected samples of his respondents were as follows: Goaso Magistrate Court (47), Kumasi High Court (186) and the Wa High Court (10).

Crook maintained that in Goaso and Wa, respondents were much more likely to use indigenous forums, such as chiefs or elders' courts first, before accessing the formal courts. He argues that this is because of the more rural character of the areas. This assertion appears to nullify his earlier position that Ghanaians do not only use the formal arbitration type as a first resort forum, but also access it more than any other legal forum. He also suggested, as indicated, that men are more likely to go to formal courts than women on behalf of family groups, rather than for themselves. He did not explain the underlying reason for this behaviour.

Crook further indicated that the sample he used for the analysis on the court in Wa was very small (ten respondents), because only a few cases were found there. This does however, not have to be an indication that the region is conflict-free since Upper West is one of the major hotbeds for land conflicts in Ghana (see Schmid, 2001: 21).

It is important to note that the three regions in the north of Ghana, with a total population of over 3.3 million have only five high courts (Commonwealth Human Rights

Initiative, Africa Office, 2008: 3). If we would accept Crook's statement that Ghanaians access the formal courts more intensively than any other legal forum, it should be that the few formal courts in Upper West would have to suffer from high case congestion. However, this is not the case. It is therefore highly probable that, apart from the few people who access the formal courts in this region, a majority of people resolve most of their disputes in traditional fashion in their communities. The argument that Ghanaians access the formal courts more than other legal forums is therefore context-specific. Moreover, the data that Crook collected from Wa, Kumasi and Goaso, appear not to be quantitatively representative enough to produce generalisable findings for the whole country.

Crook also neglects to seriously consider the difficulty the majority of Ghanaians face in paying the fees for legal representation and other service at the formal court. In Ghana, about 50.9 percent of the population live in towns and cities, while the remainder (i.e. 49.9 percent) live in rural areas (Ghana Statistics Service, 2012: 4). There are, as illustrated in the case of the three regions in the north, very few formal courts in rural areas in Ghana. Since the majority of rural people, particularly women are poor, it is hard to think that they could afford the cost of travelling long distances, often on deplorable roads, to the regional or district capitals (unless the nature of the case warrants it) to apply to a formal court. This travel may moreover, have to be taken more than once, since cases in the formal courts are often protracted.

The foundation of Crook's analysis is grounded in places with relatively better economic conditions for litigants. It is namely in these areas that social ties seem to be somewhat weaker and where government sector employment or cash crop agriculture allow people to afford legal assistance. Goaso, for example, has a large migrant population. This suggests that litigation in the 'large migrant communities' occurs between migrants themselves or takes place between migrants versus natives. In these situations, it is hard factors such as: social ties, kinship considerations, family and community pressure, might affect a litigant's choice between the different arbitration types. In other words, Crook's research findings appear to reflect the legal behaviour of migrant settlers who think, as strangers in their new places, that the formal courts may favour them more than indigenous courts. This assertion seems to be reflected in some of his interview responses:

Court is time wasting and high cost implication but I still prefer the court to arbitration since as a stranger farmer, chiefs will be partial (2004: 14).

In his analysis of legal behaviour in Ghana, it appears that Crook also largely depended on annual legal reports that were usually predicated on the lawyer's interests and selections. These reports might thus not reflect reality. Crook *de facto* appears to ignore the anthropological findings that were made since the dispute resolution of the early 1980s after which "most civil cases don't go to trial [in formal court any more]" (Merry, 1995: 12). Instead now "we conceptualize law as more plural, not located entirely in the state. And we see the "effects" of law in far broader, post-Foucauldian terms" (Merry, 1995: 12).

In many native communities like Anloga and Kumasi in Ghana, most of the people expect that a dispute must first go to the local leader or chief, before it becomes necessary to use an alternative forum such as that of a formal court. A community or "family member who violates this rule receives severe sanctions, ranging from stiff fines to a conditional period of ostracism" (Uwazie, 2000: 19). These traditional sanctions described by Uwazi are similar to what happens among the Anlo and the Asante in Ghana. In other words, although it may be possible to explain the discrepancies in the court attendance ratio (of both men and women) between the formal and indigenous courts on the basis of: knowledge of law, rights-consciousness, financial resources, and preference over one or the other form of arbitration, the fact remains that the reluctance to assert rights lies primarily outside these variables. The reluctance to assert rights is, in fact, mainly because women "often face significant social pressure from their families and communities not to seek legal recourse and instead to resolve the cases outside the judicial system" (Fenrich et al. 2001: 334). The literature on dispute resolution or conflict management along similar lines suggests plural variables such as the nature of relationships, the nature of the dispute, the disputant's past experiences, and his or her socio-economic status, as explanations for the selection of a particular arbitration type (Merry, 1982).

This analysis can therefore consider the possibility that, in a context of legal pluralism, disputants' choice of an arbitration type may depend on the type of relationship between the parties (Uwazie, 2000: 16). According to Black, "parties resort to dispute methods that are isomorphic or relative to what their social environment provides or encourages them to use" (Black, 1976: 3-4). Moreover, the question whether disputants will choose a penal, compensatory, therapeutic or a conciliatory type of court, may also "depends on the rank relations between the disputants and their degree of intimacy or relationship" (Uwazie, 2000: 16). According to Merry (1989b: 82),

Mediation is most likely to succeed between disputants whose various residential and kinship ties require them to deal with one another in the future. In other words, it is a phenomenon of communities. When social relationships are enduring, disputants need to find a settlement to continue to live together amicably.

From the above, Merry appears to suggest that the future of the disputants' relationship is a more decisive factor than his/her past in the choice of a particular arbitration type. Participation in everyday life and field interviews in Anloga and Kumasi, have shown that people's past relationships and the thought of continuing or discontinuing that relationship, determines their selection of an arbitration type. The court procedures, with this in mind, generally strive to conclude in a form of reconciliation so that life can continue. In the family systems of Anlo and Asante, lives are interdependent and kinship relationships are taken very serious. Every time a relationship is broken, frantic efforts are made to look for means to resolve the dispute and mend the relationship. Thus, because of the need to keep the communal life in a harmonious balance, most disputants may first try every conceivable way to resolve intra-family disputes to avoid washing the dirty family linen in public.

Traditionally among the Anlo and the Asante societies, airing family disputes in public causes stains on the image of the family. If an attempt to resolve a dispute within the family fails, it may be taken to an elder or a chief's court. Most disputants prefer to resolve their cases in these traditional settings, where the procedure seems less adversarial. The use of family, elders or the chiefs' courts, for the resolution of intra-family or any other form of dispute, ensures that a dispute is not allowed to jeopardise the ongoing relationships or undermine the group's unity and solidarity (Uwazie, 2000: 19). It is only when these possibilities of resolving misunderstandings in the indigenous forums prove unsuccessful that disputants may decide to access institutions of formal arbitration (Acquah, 2007).

The near ubiquitous availability further enhances the popularity of the indigenous court. These facts make it plausible to maintain that the kind of arbitration type that the disputants prefer to access, may be determined by the possibilities of legal forums that their social environment provides or encourages them to use. This may also explain the reason why attendance at the Asantehene's indigenous court has more recorded cases than the formal court. If one realises that the cases reported in the indigenous court are only cases tried in a male chief's court and do not include unrecorded cases tried in other traditional forums, this number becomes more significant.

One thing that shows in the assessment however is that disputants (women) often sacrifice their social relationship when the issue involves physical threats to their life, rape, theft or in cases in which the available indigenous options are socially or legally unattractive. Thus, in difficult disputes, if disputants become emotionally charged, their moves and reactions ... intensify and escalate' (Merry, 1979: 908); and they could resort to other means whether legal or illegal to appeal for redress.

Some argue that the selection of arbitration type may also be relative or isomorphic to the disputants' social status or power; that is to say, the disputants' sex, educational, and income level. Merry corroborates this view as she indicates that mediation in small-scale societies is beneficial or fair only when the disputants are equal (Merry, 1982). The underlying implication is that legal structures seem to affect the distribution of power and vice-versa (Uwazie, 2000). It is, for example, believed that the formal legal system is a litigious arena dominated by disputants with higher incomes and better educational backgrounds (Cappelletti, 1978). This perspective suggests that those within the lower education and income brackets may use fora other than the formal court to resolve their disputes. This means that those with higher incomes can better access the formal court, because they have the means to pay for the legal expenses involved. Similarly, higher education may also help such disputants to understand the formal court procedures, proceedings and technicalities. This presupposes that the formal or state law minimises the degree of inequality that may exist between disputants (Uwazie, 2000).

In her critique of why victims of discriminatory institutions in Sekhukhune (South Africa) support such traditional institutions, Oomen raises similar questions by correlating educational levels and the income status of people with the degree of support they lend to traditional institutions (Oomen, 2005). One of the conclusions that Oomen draws from her analysis is that 'at the individual level, the older people are more supportive than the youth, women slightly more so than men and those with less income or education more so than people with a higher socio-economic status' (Oomen, 20005: 188-92). Greenstreet similarly suggests that as more and more women become educated, together with the rapid socio-economic changes taking place in Ghana, Ghanaian women may become emancipated from harmful traditional institutions and practices (Greenstreet, 1972: 355).

The observations of Oomen and Greenstreet and those of other scholars seem plausible, since education and good economic attainment may not only open people's eyes to see life-promoting or life-negating realities around them, but also inform them of the better choices

they could make. It may as well empower such emancipated people to access the formal legal system in their fight against choices they do not like to see imposed on them. These standpoints however, admittedly do not explain why men, who are relatively more educated and wealthier, access indigenous courts more than women in Anlo and Asante.

According to the Ghana 2003 Core Welfare Indicators Questionnaire (CWIQII) Survey Report on the highest level of education completed by both genders in Keta administrative district (within which Anloga is located), out of 495 men sampled, 11.5 percent had completed senior secondary school, while out of 417 women, 8.5 percent had completed senior secondary school (Ghana Statistical Service, 2005: 34-7). Furthermore, 4.7 percent of men and 1.5 percent of women had tertiary education. In the Kumasi metropolis, it was documented that out of 2,671 men, 18.2 percent completed senior secondary school, while 12.8 percent of 2,670 women had the same education. Similarly, 4.9 percent of men and 3.4 percent of women had tertiary education in the Kumasi metropolis. The Ghana Living Standards Survey in 2000 (GLSS 4) observed significant differences between men and women in education. According to the survey, 44.1 percent of women and 21.1 percent of men in Ghana had no formal education. The survey states that since “formal sector employment now requires secondary or higher levels of education, it follows that only 5.7 percent of women compared to 15.8 percent of men can work in the sector” (WiLDAF/FeDDAF – West Africa, 2003/2004: 1). According to the survey moreover, since the majority of women did not attend higher education or possess marketable skills, they are not able to secure jobs with high salaries in the formal sector.

Given the comparative low levels of education and income status it is likely that women (if we go by Oomen’s correlation theory), may not only increase their support for the traditional institutions of dispute resolution in their communities in Anlo and Asante, but may as well limit their own access to the formal court that demands higher financial commitment. While the correlation in the level of education and income status corresponds with their level of support for traditional institutions, it is difficult to explain with the same theory why men in Anlo and Asante, with relatively higher education and wealth than their women counterparts, continue to give more support to traditional institutions in their localities in Ghana.

Support for traditional institutions by wealthy, educated people in the context of Anlo and Asante, might stem from their respect for custom and tradition, which have been part of their upbringing and socialisation since childhood. The research moreover, identifies that



Anlo and Asante individuals and families benefit from the application of the traditional systems of inheritance, and this may explain their continuous support and use of the systems. In addition, among the Asante in particular, people receive financial help through family property to help establish themselves. Because of this practice, people lend support to an indigenous institution that allows the family to inherit from its members. Thus, in the contexts of the Anlo and the Asante, in spite of the influential roles education and income levels may play, they do not single-handedly dictate people's choice of what court to access. Other factors, including the nature of the case at hand, the relationships between disputants, disputants' experiences, and the court their environment provides or encourages them to use, determine disputants' choice of arbitration type. In short, the study contended that a combination of factors affects a disputant's decision in his or her choice of a particular court to access.

### **Conclusion**

The paper has discussed Anlo and Asante property inheritance and therefore, property relations and how indigenous legal and socio-cultural practices discriminated against women when it comes to inheriting property from a man; and how this might possibly influence women's choice of courts for defending or claiming their property inheritance rights. The research finding has, however, shown that contrary to expectation, the inequality of property relations (engendered by the legal and socio-cultural practices of the family systems) did not influence women's choice of court for defending or claiming their property inheritance rights in the studied communities. The research realised that although it may be possible to explain the discrepancies in the court attendance ratio between the formal and indigenous courts on the basis of: knowledge of law, rights-consciousness, financial resources, and preference over one or the other form of arbitration, the fact remains that the reluctance to assert rights lies to large extent outside these variables. The reluctance to assert rights is, in fact, mainly because women often are confronted by significant social pressure from their families and communities not to seek formal legal recourse and instead to resolve the cases domestically. The research has also discovered that access to indigenous court was higher than that of the formal court and that the former may help decongest cases in the latter in the studied communities.

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